ORIGINAL

Supreme Court, U.S.
FILED
JAN 11 2001
CLERK

No. 00-957

IN THE
SUPREME COURT OF THE UNITED STATES

IN THE MATTER OF THE CARE AND TREATMENT
OF MICHAEL T. CRANE

STATE OF KANSAS,
Petitioner

v.

MICHAEL T. CRANE,
Respondent

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The respondent asks leave to proceed *in forma pauperis*.

Respondent has previously been granted leave to proceed *in forma pauperis* in the following courts:

To the Kansas Supreme Court to appeal his criminal conviction in District Court case No. 93CR0028;

To the Kansas Supreme Court to appeal his involuntary civil commitment in District Court case No. 97C16409;

Additionally, in each of the above District Court cases, Respondent was represented by court appointed counsel.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

John C. Donham, #13394
Attorney for Michael T. Crane
115 South Kansas Ave.
Olathe, Kansas 66061
(913) 764-3012

RECEIVED
JAN 16 2001
OFFICE OF THE CLERK
SUPREME COURT, U.S.

11 pp

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, MICHAEL T. CRANE, am the ~~petitioner~~ respondent in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$ -0-	$	$ -0-	$
Self-employment	$ -0-	$	$ -0-	$
Income from real property (such as rental income)	$ -0-	$	$ -0-	$
Interest and dividends	$ -0-	$	$ -0-	$
Gifts	$ -0-	$	$ -0-	$
Alimony	$ -0-	$	$ -0-	$
Child Support	$ -0-	$	$ -0-	$
Retirement (such as social security, pensions, annuities, insurance)	$ -0-	$	$ -0-	$
Disability (such as social security, insurance payments)	$ -0-	$	$ -0-	$
Unemployment payments	$ -0-	$	$ -0-	$
Public-assistance (such as welfare)	$ -0-	$	$ -0-	$
Other (specify): WORK PROGRAM IN SEXUAL PREDATOR FACILITY	$ 144.00 MTC	$	$ 144.00 MTC	$
Total monthly income:	$ 144.00 MTC	$	$ 144.00 MTC	$

BEST AVAILABLE COPY

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
KANSAS SEXUAL PREDATOR WORK PROGRAM	LARNED STATE SECURITY HOSPITAL LARNED, KS 67550	FEB 2006 -- PRESENT	$ 144.00 MTC
- NONE -			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
			$
			$
			$

4. How much cash do you and your spouse have? $ APX. $700.00
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
MTC First National Bank of Larned	Checking MTC	$ $700.00	$
		$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings. NONE

☐ Home
Value _____

☐ Other real estate
Value _____

☐ Motor Vehicle #1
Year, make & model _____
Value _____

☐ Motor Vehicle #2
Year, make & model _____
Value _____

☐ Other assets
Description _____
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
-0-	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
-0-	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$ -0-	$_____
Are real estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ -0-	$_____
Home maintenance (repairs and upkeep)	$ -0-	$_____
Food	$ -0-	$_____
Clothing	$ -0-	$_____
Laundry and dry-cleaning	$ 9.50	$_____
Medical and dental expenses RESPONSIBLE FOR OWN OPTICAL & DENTAL EXPENSES	$ ZERO (SUGAR)	$_____
Transportation (not including motor vehicle payments)	$ -0-	$_____
Recreation, entertainment, newspapers, magazines, etc.	$_____	$_____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ -0-	$_____
Life	$ -0-	$_____
Health	$ -0-	$_____
Motor Vehicle	$ -0-	$_____
Other: _____	$ -0-	$_____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	$ -0-	$_____
Installment payments		
Motor Vehicle	$ -0-	$_____
Credit card(s)	$ -0-	$_____
Department store(s)	$ -0-	$_____
Other: _____	$ -0-	$_____
Alimony, maintenance, and support paid to others	$ -0-	$_____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ -0-	$_____
Other (specify): Stationaire / Hygiene	$ 16.50	$_____
Total monthly expenses:	$ 26.00	$_____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☒ Yes ☐ No If yes, describe on an attached sheet.

THE WORK PROGRAM IS FOR ONE YEAR ONLY. IT ENDS ON/or about Feb 17th AND MY INCOME WILL GO TO ZERO.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

HAVE BEEN INCARCERATED BY THE STATE OF KANSAS SINCE JANUARY 1993.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 5th, 2001

Michael D. Crane

(Signature)

JURISDICTION

Respondent files this Brief in Opposition pursuant to Supreme Court Rule 15.

REASON NOT TO GRANT A WRIT OF CERTIORARI

The Kansas Supreme Court correctly interpreted the limitations this Court imposed upon the states concerning the constitutional use of involuntary civil commitment proceedings against citizens.

The State cites other jurisdictions that have reached a contrary result. In those cases relied upon by the State, the issue on appeal was the not whether volitional control impairment needed to be proven, but rather the degree of volitional control impairment that needed to be proven. The Kansas Supreme Court followed this Court's ruling that to constitutionally impose an involuntary civil commitment to a mental hospital, the state must prove to a jury that the proposed patient suffers from a mental disorder that impairs his volitional control to the degree he cannot control his dangerous behavior. The Kansas Supreme Court found that the trial court below erred in not so instructing the jury and remanded for a new trial. This is not a case that represents a diverging view of this Court's ruling in *Kansas v. Hendricks*, 521 U.S. 346 (1997).

PERCEIVED MISSTATEMENTS OF LAW OR FACT

The civil proceeding against Mr. Crane was brought under K.S.A. 1996 Supp. 59-29a01 *et seq* - not K.S.A. 1999 Supp. 59-29a01 *et seq*. (The 1996 Supplement is attached as appendix "A").

K.S.A. 1996 Supp. 59-29a02(a) defined "sexually violent predator" as "any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts

of sexual violence, if not confined in a secure facility."

K.S.A. 1996 Supp. 59-29a02 did not carry a definition of "likely to engage in repeat acts of sexual violence".

There is an inference in the State's petition on page 5 that the Kansas Supreme Court reached its decision to reverse and remand for a new trial based upon the absence within the Kansas statute defining "personality disorder" of the element of "volitional control". The Kansas Supreme Court reached its decision based upon the State's Attorney General arguing consistently throughout the proceeding at the trial court level that volitional impairment was not an element to be proven. The trial court agreed and refused to so instruct the jury. The Kansas Supreme Court noted that the legislative body had not amended the statutes to reflect this Court's decision in *Hendricks* but that the inescapable conclusion, in light of *Hendricks*, is that before the State can involuntarily commit a person to a mental hospital, there must be a finding that the person has lost the ability to control his dangerous behavior.

CONCLUSION

The State of Kansas seeks a review by this Court based upon what it calls a widening split among the individual states concerning this Court's ruling in *Hendricks*. This case is not at odds with those cases cited by the State. The cited cases concede volitional impairment must be shown.

Respectfully submitted,

John C. Donham, #13394
Attorney for Michael T. Crane
115 South Kansas Ave.
Olathe, Kansas 66061
(913) 764-3012

CASE ANNOTATIONS

1. Sexually violent predator act held unconstitutional violation of substantive due process. In re Care & Treatment of Hendricks, 259 K. 346, 350, 912 P.2d 129 (1996).

59-29a03. Same; notice of release of sexually violent predator by agency with jurisdiction to attorney general and multidisciplinary team, time, contents; immunity from liability; establishing a multidisciplinary team; appointment of a prosecutor's review committee; assessment of person. (a) When it appears that a person may meet the criteria of a sexually violent predator as defined in K.S.A. 59-29a02 and amendments thereto, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection (d), 90 days prior to:

(1) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense, except that in the case of persons who are returned to prison for no more than 90 days as a result of revocation of postrelease supervision, written notice shall be given as soon as practicable following the person's readmission to prison;

(2) release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to K.S.A. 22-3305 and amendments thereto;

(3) release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to K.S.A. 22-3428 and amendments thereto; or

(4) release of a person who has been found not guilty of a sexually violent offense pursuant to K.S.A. 22-3428, and amendments thereto, and the jury who returned the verdict of not guilty answers in the affirmative to the special question asked pursuant to K.S.A. 22-3221.

(b) The agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection (d) of the following:

(1) The person's name, identifying factors, anticipated future residence and offense history; and

(2) documentation of institutional adjustment and any treatment received.

(c) The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection (d), members of the prosecutor's review committee appointed as provided in subsection (e) and individuals constitute proceedings in accordance with the care and treatment act for mentally ill persons.

History: L. 1996, ch. 167, § 41; Apr. 18.

59-29a04. Same; report of arresting officer confidential. The arresting officer's report made pursuant to K.S.A. 1996 Supp. 59-2985 and amendments thereto shall not be available to inspection or copy by any persons other than the person arrested, that person's attorney, the county or district attorney and the judge of the district court.

History: L. 1996, ch. 167, § 42; Apr. 18.

Article 29a—COMMITMENT OF SEXUALLY VIOLENT PREDATORS

Law Review and Bar Journal References:

"The Civil Commitment of Sexually Violent Predators in Kansas: A Modern Law for Modern Times," Kelly A. McCaffrey, 42 K.L.R. 887 (1994).

"Kansas' Sexual Predator Act and the Impact of Expert Prediction: Psyched Out by the Daubert Test," Clayton C. Slagg, 34 W.L.J. 320 (1995).

Attorney General's Opinions:

Sexual predator act is not applicable to juvenile offenders. 94-106.

59-29a01.

CASE ANNOTATIONS

1. Sexually violent predator act held unconstitutional violation of substantive due process. In re Care & Treatment of Hendricks, 259 K. 346, 347, 912 P.2d 129 (1996).

59-29a02. Same; definitions. As used in this act:

(a) "Sexually violent predator" means any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence, if not confined in a secure facility.

(b) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.

(c) "Predatory" means acts directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization.

(d) "Sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

were incurred were instituted without probable cause and not in good faith.

History: L. 1996, ch. 167, § 37; Apr. 18.

59-2903. Notice of death of patients in treatment facilities. In the event of the death of a patient in a treatment facility, the head of the treatment facility shall immediately give notice of the date, time, place and cause of such death, to the extent known, to the nearest known relative of the patient, and, as appropriate, to the court having jurisdiction over the patient, the attorney for the patient, and to the county or district attorney and as otherwise provide for by law, to the coroner for the county in which the patient died.

History: L. 1996, ch. 167, § 38; Apr. 18.

59-2983. Applicability to persons in custody on criminal charges. Nothing in this act shall be construed to apply to any person alleged or thought to be a mentally ill person subject to involuntary commitment for care and treatment under this act who is in custody on a criminal charge, except with the consent of either the prosecuting attorney or trial court.

History: L. 1996, ch. 167, § 39; Apr. 18.

59-2984. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: L. 1996, ch. 167, § 40; Apr. 18.

59-2985. Issue of mental illness upon arrest of certain persons; proceedings. Whenever any person is taken into custody by an arresting officer and such officer has reasonable grounds to believe that such person has violated K.S.A. 21-3430, 21-3421, 21-3422, 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3507, 21-3508, 21-3509, 21-3510, 21-3511, 21-3512, 21-3513, 21-3602 or 21-3603 and amendments thereto, the officer shall forthwith report such facts to the county or district attorney by a written report under oath, and the county or district attorney may submit such report to the judge of the district court. If the court finds from an examination of the report that there is evidence raising the issue of the mental illness of the person who was arrested, the court shall direct the county or district attorney to sign and file a petition to in-

tracting, appointed or volunteering to perform services hereunder shall be immune from liability for any good-faith conduct under this section.

(d) The secretary of corrections shall establish a multidisciplinary team which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection (a). The team, within 30 days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator, as established in K.S.A. 59-29a02 and amendments thereto. The team shall notify the attorney general of its assessment.

(e) The attorney general shall appoint a prosecutor's review committee to review the records of each person referred to the attorney general pursuant to subsection (a). The prosecutor's review committee shall assist the attorney general in the determination of whether or not the person meets the definition of a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutor's review committee.

History: L. 1994, ch. 316, § 3; L. 1995, ch. 193, § 2; L. 1995, ch. 251, § 33; Jan. 1, 1996.

Attorney General's Opinions:

Sexually violent predators; civil commitment, parole board is an agency with jurisdiction 94-100

Maliciously exposing a paroled or discharged person; name of person subject to sexually violent predator civil commitment proceeding 94-117.

CASE ANNOTATIONS

1. Fees of appointed counsel and expert witnesses in sexually violent predator act litigation are responsibility of county. In re Care & Treatment of Rabora, 259 K. 813, 818, 916 P.2d 15 (1996).

59-29a04. Same; petition, time, contents. When it appears that the person presently confined may be a sexually violent predator and the prosecutor's review committee appointed as provided in subsection (e) of K.S.A. 59-29a03 and amendments thereto has determined that the person meets the definition of a sexually violent predator, the attorney general may file a petition, within 75 days of the date the attorney general received the written notice by the agency of jurisdiction as provided in subsection (a) of K.S.A. 59-29a03 and amendments thereto, alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

History: L. 1994, ch. 316, § 4; L. 1995, ch. 193, § 3; May 4.

Attorney General's Opinions:

Maliciously exposing a paroled or discharged person; name of person subject to sexually violent predator civil commitment proceeding 94-117.

CASE ANNOTATIONS

1. Fees of appointed counsel and expert witnesses in sexually violent predator act litigation are responsibility of county. In re Care & Treatment of Rabora, 259 K. 813, 818, 916 P.2d 15 (1996).

59-29a05. Same; determination of probable cause, hearing; evaluation; person taken into custody. (a) Upon filing of a petition under K.S.A. 59-29a04, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made, the judge shall direct that person be taken into custody.

(b) Within 72 hours after a person is taken into custody pursuant to subsection (a), such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the detained person is a sexually violent predator. At this hearing the court shall: (1) Verify the detainer's identity; and (2) determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(c) At the probable cause hearing as provided in subsection (b), the detained person shall have the following rights in addition to the rights previously specified: (1) To be represented by counsel; (2) to present evidence on such person's behalf; (3) to cross-examine witnesses who testify against such person; and (4) to view and copy all petitions and reports in the court file.

(d) If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

History: L. 1994, ch. 316, § 5; L. 1995, ch. 193, § 4; May 4.

59-29a06. Same; trial; counsel and experts; indigent persons; jury. Within 60 days after the completion of any hearing held pursuant to K.S.A. 59-29a05 and amendments thereto, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial

may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings under this act, any person subject to this act shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. Whenever any person is subjected to an examination under this act, such person may retain experts or professional persons to perform an examination of such person's behalf. When the person wishes to be examined by a qualified expert or professional person of such person's own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court, upon the person's request, shall determine whether the services are necessary and reasonable compensation for such services. If the court determines that the services are necessary and the expert or professional person's requested compensation for such services is reasonable, the court shall assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person and compensation received in the same case or for the same services from any other source. The person, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least four days prior to trial. Number and selection of jurors shall be determined as provided in K.S.A. 22-3403, and amendments thereto. If no demand is made, the trial shall be before the court.

History: L. 1994, ch. 316, § 6; L. 1995, ch. 193, § 5; May 4.

59-29a07. Same; determination; commitment procedure; interagency agreements; mistrials. (a) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Such determination may be appealed. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the secretary of social and rehabilitation services for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. Such control, care and treatment shall be provided at a facility operated by the department of social and rehabilitation services. At all times, persons committed for control, care and treatment by the department of social and rehabilitation services pursuant to this act shall be kept in a secure facility and such persons shall be segregated at all times from r other patient under the supervision of the sec tary of social and rehabilitation services and commencing June 1, 1995, such persons committed pursuant to this act shall be kept in a facility or building separate from any other patient under the supervision of the secretary. The department of social and rehabilitation services is authorized to enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the secretary of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the secretary of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release. Upon a mistrial, the court shall direct that the person be held at an appropriate secure fac ity, including, but not limited to, a county jail, u another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial, unless such subsequent trial is continued as provided in K.S.A. 59-29a06 and amendments thereto.

(b) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be released pursuant to K.S.A. 22-3305 and amendments thereto, and such person's commitment is sought pursuant to subsection (a), the court shall first hear evidence and determine whether the person did commit the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence ap-

plicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on such person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

History: L. 1994, ch. 316, § 7; L. 1995, ch. 193, § 6; May 4.

Attorney General's Opinions:

Sexually violent predator act; commitment; attempted escape; use of deadly force 94-140

59-29a08. Same; annual examinations; discharge petitions by persons committed under this act over the secretary's objection at time of annual examination, procedure. Each person committed under this act shall have a current examination of the person's mental condition made once every year. The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional person to examine such person, and such expert or professional person shall have access to all records concerning the person. The yearly report shall be provided to the court that committed the person under this act. The court shall conduct an annual review of the status of the committed person. Nothing contained in this act shall prohibit the person from otherwise petitioning the court for discharge at this hearing. The secretary of the department of social and rehabilitation services shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the annual report. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing. If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and will not engage in acts of sexual violence if discharged, then the court shall set a hearing on the issue. At the hearing, the committed persoe shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and if released is likely to engage in acts of sexual violence.

History: L. 1994, ch. 316, § 8; L. 1995, ch. 193, § 7; May 4.

59-29a10. Petition for release; procedure. If the secretary of the department of social and rehabilitation services determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to commit predatory acts of sexual violence if released, the secretary shall authorize the person to petition the court for release. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for release, shall order a hearing within 30 days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of such attorney's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if discharged is likely to commit predatory acts of sexual violence.

History: L. 1994, ch. 316, § 10; L. 1995, ch. 193, § 8; May 4.

59-29a16. Same; confidential or privileged information and records. In order to protect the public, relevant information and records which are otherwise confidential or privileged shall be released to the agency with jurisdiction or the attorney general for the purpose of meeting the notice requirement provided in K.S.A. 59-29a03 and amendments thereto and determining whether a person is or continues to be a sexually violent predator. The provisions of this section shall be part of and supplemental to the provisions of K.S.A. 59-29a01 through 59-29a15 and amendments thereto.

History: L. 1995, ch. 193, § 9; May 4.

59-29a17. Same; court records; sealed and opened by court order. Any psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records or victim impact statements which have been submitted to the court or admitted into evidence under this act shall be part of the record but shall be sealed and opened only on order of the court or as provided in K.S.A. 59-29a01 et seq. and amendments thereto. The provisions of this section shall be part of and supplemental to the provisions of K.S.A. 59-29a01 through 59-29a15 and amendments thereto.

History: L. 1995, ch. 193, § 10; May 4.

Article 30.—GUARDIANS OR CONSERVATORS

Cross References to Related Sections:

Kansas guardianship program, see 74-9601 et seq.

59-3002. Definitions. When used in the act for obtaining a guardian or conservator, or both:

(a) "Disabled person" means any adult person whose ability to receive and evaluate information effectively or to communicate decisions, or both, is impaired to such an extent that the person lacks the capacity to manage such person's financial resources or, except for reason of indigency, to meet essential requirements for such person's physical health or safety, or both. A person shall not be considered to be disabled or to lack capacity to meet the essential requirements for physical health or safety for the sole reason such person relies upon or is being furnished treatment by spiritual means through prayer, in lieu of medical treatment, in accordance with the tenets and practices of a recognized church or religious denomination of which such person is a member or adherent.

(b) "Manage financial resources" means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.

(c) "Meet essential requirements for physical health or safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is more likely than not to occur.

(d) "Guardian" means an individual or a nonprofit corporation certified in accordance with K.S.A. 59-3037 and amendments thereto ch has been appointed by a court to act on be. of a ward and possessed of some or all of the powers and duties set out in K.S.A. 59-3018 and amendments thereto. "Guardian" does not mean natural guardian unless specified.

(e) "Natural guardian" means both the father and mother of a minor if neither parent has been found to be a disabled person or had parental rights terminated by a court of competent jurisdiction. If either parent of a minor dies, has been found to be a disabled person or has had parental rights terminated by a court of competent jurisdiction, the other shall be the natural guardian.

(f) "Conservator" means an individual or a corporation who is appointed by the court to act on behalf of a conservatee and who is possessed of some or all of the powers and duties set out in K.S.A. 59-3019 and amendments thereto.

(g) "Minor" means any person defined by K.S.A. 38-101 and amendments thereto as being within the period of minority.

(h) "Proposed ward" means a perso or whom a petition for the appointment of a guardian pursuant to K.S.A. 59-3006 and amendments thereto has been filed.

(i) "Proposed conservatee" means a person for whom a petition for the appointment of a conservator pursuant to K.S.A. 59-3006 and amendments thereto has been filed.

(j) "Ward" means a person who has a guardian.

(k) "Conservatee" means a person who has a conservator.

(l) The terms defined in K.S.A. 1996 Supp. 59-2946 and amendments thereto have the meanings provided by that statute.